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STATE OF IDAHO

OFFICE OF THE ATTORNEY GENERAL

December 3, 1991

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DEPARTMENT OF HEALTH & WELFARE
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Michael E. McNichols
Clements, Brown & McNichols
P.O. Box 1510
Lewiston, ID 83501

Re: Avery Landing

Dear Mike:

In your absence, I discussed with Robert Brown the addition of the Federal Highway Administration (FHA) as a party to a settlement regarding the Avery Landing site. The Department, at this time, will not proceed with further action against FHA for the following reasons:

(1) This site has been left unresolved for a significant period of time. The FHA has made it clear that it will not contribute financially to a cleanup of this site. The involvement of the FHA at this point would only serve to delay needed remediation.

(2) It is certainly Potlatch's right to proceed against the FHA if it so desires.

(3) The most likely means of avoiding a sovereign immunity defense from FHA, if that is possible, is to proceed via CERCLA. It is the Department's intent to avoid CERCLA.

I also was informed by Mr. Brown that Potlatch intends to burn the recovered product in its burners at the St. Maries rather than the Lewiston plant. Burning the product at the St. Maries plant may require Potlatch to obtain an air quality permit to construct. It is DEQ's understanding that the burners at St. Maries presently burn wood waste. Burning the recovered product at this plant would most likely constitute the modification of a stationary source which would require Potlatch to obtain a permit to construct pursuant to IDAPA § 16.01.1012. On the other hand, burning the product at the Lewiston plant should not require a change in the existing permit. If you have any further questions regarding the air permit requirements, please call Martin Bauer at 334-5898.

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Michael E. McNichols

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I look forward to hearing from you regarding whether we can begin preparing a consent order to govern the method of remediation previously agreed to between DEQ and Potlatch.

Yours very truly,



Douglas M. Conde
Deputy Attorney General

DMC/pjs

cc: Grace Koh Angelos
Joe Nagel
Paul Jehn
Lisa Prochnow
Martin Bauer